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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.

INC, individually and on behalf of all)

others similarly situated,)

CLASS ACTION

Plaintiff,)

**COMPLAINT FOR VIOLATIONS
 OF:**

vs.)

B&S CONSULTING GROUP LLC)

d/b/a FUNDSHOP; and DOES 1)

through 10, inclusive,)

Defendant.)

1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of Defendant B&S CONSULTING
8 GROUP LLC D/B/A FUNDSHOP (“Defendant”), in negligently, knowingly,
9 and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation
10 of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”)
11 and related regulations, specifically the National Do-Not-Call provisions, thereby
12 invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a California corporation with its principle place of business also in California,
16 seeks relief on behalf of a Class, which will result in at least one class member
17 belonging to a different state than that of Defendant, a New York company.
18 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
19 TCPA, which, when aggregated among a proposed class in the thousands,
20 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,
21 both diversity jurisdiction and the damages threshold under the Class Action
22 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Northern
24 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
25 business within the State of California and Plaintiff resides within the County of
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),

1 is a roofing and plumbing business in Emeryville, California and is a “person” as
2 defined by *47 U.S.C. § 153 (39)*.

3 5. Defendant, B&S CONSULTING GROUP LLC D/B/A
4 FUNDSHOP (“Defendant”), is a business loan provider, and is a “person” as
5 defined by *47 U.S.C. § 153 (39)*.

6 6. The above named Defendant, and its subsidiaries and agents, are
7 collectively referred to as “Defendants.” The true names and capacities of the
8 Defendants sued herein as DOE DEFENDANT 1 through 10, inclusive, are
9 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
10 names. Each of the Defendants designated herein as a DOE is legally responsible
11 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend
12 the Complaint to reflect the true names and capacities of the DOE Defendants
13 when such identities become known.

14 7. Plaintiff is informed and believes that at all relevant times, each and
15 every Defendant was acting as an agent and/or employee of each of the other
16 Defendant and was acting within the course and scope of said agency and/or
17 employment with the full knowledge and consent of each of the other Defendant.
18 Plaintiff is informed and believes that each of the acts and/or omissions
19 complained of herein was made known to, and ratified by, each of the other
20 Defendant.

21 **FACTUAL ALLEGATIONS**

22 8. Beginning in or around October 2018, Defendant contacted Plaintiff
23 on Plaintiff’s cellular telephone numbers ending in -1080, and -7447 in an attempt
24 to solicit Plaintiff to purchase Defendant’s services.

25 9. Defendant contacted or attempted to contact Plaintiff from telephone
26 number (409) 908-3134 -belonging to Defendant.

27 10. Defendant used an “automatic telephone dialing system” as defined
28 by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to solicit its

1 services.

2 11. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 12. Defendant's calls were placed to telephone number assigned to a
5 cellular telephone service for which Plaintiff incurs a charge for incoming calls
6 pursuant to 47 U.S.C. § 227(b)(1).

7 13. Plaintiff is not a customer of Defendant's services and has never
8 provided any personal information, including his telephone number, to Defendant
9 for any purpose whatsoever.

10 14. During all relevant times, Defendant did not possess Plaintiff's
11 "prior express consent" to receive calls using an automatic telephone dialing
12 system on its cellular telephones pursuant to 47 U.S.C. § 227(b)(1)(A).

13 15. Furthermore, Plaintiff's cellular telephone number ending in -1080,
14 and -7447 has been on the National Do-Not-Call Registry well over thirty (30)
15 days prior to Defendant's initial calls.

16 16. Defendant placed multiple calls soliciting its business to Plaintiff on
17 its cellular telephones beginning in or around October of 2018.

18 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
19 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

20 18. Plaintiff received numerous solicitation calls from Defendant within
21 a 12-month period.

22 19. Plaintiff requested for Defendant to stop calling Plaintiff during one
23 of the initial calls from Defendant, thus revoking any prior express consent that
24 had existed and terminating any established business relationship that had existed,
25 as defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

26 20. Despite this, Defendant continued to call Plaintiff in an attempt to
27 solicit its services and in violation of the National Do-Not-Call provisions of the
28 TCPA.

21. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant after requesting they stop calling, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

22. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, "The Classes"). The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

23. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter "The ATDS Revocation Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

24. The class concerning the National Do-Not-Call violation (hereafter

1 “The DNC Class”) is defined as follows:

2 All persons within the United States registered on the
3 National Do-Not-Call Registry for at least 30 days, who
4 had not granted Defendant prior express consent nor
5 had a prior established business relationship, who
6 received more than one call made by or on behalf of
7 Defendant that promoted Defendant’s products or
8 services, within any twelve-month period, within four
9 years prior to the filing of the complaint.

10 25. The class concerning the National Do-Not-Call violation following
11 revocation of consent and prior business relationship, to the extent they existed
12 (hereafter “The DNC Revocation Class”) is defined as follows:

13 All persons within the United States registered on the
14 National Do-Not-Call Registry for at least 30 days, who
15 received more than one call made by or on behalf of
16 Defendant that promoted Defendant’s products or
17 services, after having revoked consent and any prior
18 established business relationship, within any twelve-
19 month period, within four years prior to the filing of the
20 complaint.

21 26. Plaintiff represents, and is a member of, The ATDS Class, consisting
22 of all persons within the United States who received any solicitation telephone
23 calls from Defendant to said person’s cellular telephone made through the use of
24 any automatic telephone dialing system or an artificial or prerecorded voice and
25 such person had not previously not provided their cellular telephone number to
26 Defendant within the four years prior to the filing of this Complaint.

27 27. Plaintiff represents, and is a member of, The ATDS Revocation
28 Class, consisting of all persons within the United States who received any
solicitation/telemarketing telephone calls from Defendant to said person’s cellular
telephone made through the use of any automatic telephone dialing system or an

1 artificial or prerecorded voice and such person had revoked any prior express
2 consent to receive such calls prior to the calls within the four years prior to the
3 filing of this Complaint.

4 28. Plaintiff represents, and is a member of, The DNC Class, consisting
5 of all persons within the United States registered on the National Do-Not-Call
6 Registry for at least 30 days, who had not granted Defendant prior express
7 consent nor had a prior established business relationship, who received more than
8 one call made by or on behalf of Defendant that promoted Defendant's products
9 or services, within any twelve-month period, within four years prior to the filing
10 of the complaint.

11 29. Plaintiff represents, and is a member of, The DNC Revocation Class,
12 consisting of all persons within the United States registered on the National Do-
13 Not-Call Registry for at least 30 days, who received more than one call made by
14 or on behalf of Defendant that promoted Defendant's products or services, after
15 having revoked consent and any prior established business relationship, within
16 any twelve-month period, within four years prior to the filing of the complaint.

17 30. Defendant, their employees and agents are excluded from The
18 Classes. Plaintiff does not know the number of members in The Classes, but
19 believes the Classes members number in the thousands, if not more. Thus, this
20 matter should be certified as a Class Action to assist in the expeditious litigation
21 of the matter.

22 31. The Classes are so numerous that the individual joinder of all of its
23 members is impractical. While the exact number and identities of The Classes
24 members are unknown to Plaintiff at this time and can only be ascertained
25 through appropriate discovery, Plaintiff is informed and believes and thereon
26 alleges that The Classes includes thousands of members. Plaintiff alleges that
27 The Classes members may be ascertained by the records maintained by
28 Defendant.

32. Plaintiff and members of The ATDS Class and The ATDS Revocation Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and ATDS Class members via their cellular telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class members to incur certain charges or reduced telephone time for which Plaintiff and ATDS Class and ATDS Revocation Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class members.

33. Common questions of fact and law exist as to all members of The ATDS Class which predominate over any questions affecting only individual members of The ATDS Class. These common legal and factual questions, which do not vary between ATDS Class members, and which may be determined without reference to the individual circumstances of any ATDS Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a ATDS Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the ATDS Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

34. As a person that received numerous telemarketing/solicitation calls

1 from Defendant using an automatic telephone dialing system or an artificial or
2 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
3 claims that are typical of The ATDS Class.

4 35. Common questions of fact and law exist as to all members of The
5 ATDS Revocation Class which predominate over any questions affecting only
6 individual members of The ATDS Revocation Class. These common legal and
7 factual questions, which do not vary between ATDS Revocation Class members,
8 and which may be determined without reference to the individual circumstances
9 of any ATDS Revocation Class members, include, but are not limited to, the
10 following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendant made any telemarketing/solicitation call
13 (other than a call made for emergency purposes or made with
14 the prior express consent of the called party) to an ATDS
15 Revocation Class member, who had revoked any prior express
16 consent to be called using an ATDS, using any automatic
17 telephone dialing system or any artificial or prerecorded voice
18 to any telephone number assigned to a cellular telephone
19 service;
- 20 b. Whether Plaintiff and the ATDS Revocation Class members
21 were damaged thereby, and the extent of damages for such
22 violation; and
- 23 c. Whether Defendant and their agents should be enjoined from
24 engaging in such conduct in the future.

25 36. As a person that received numerous telemarketing/solicitation calls
26 from Defendant using an automatic telephone dialing system or an artificial or
27 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
28 is asserting claims that are typical of The ATDS Revocation Class.

1 37. Plaintiff and members of The DNC Class and DNC Revocation
2 Class were harmed by the acts of Defendant in at least the following ways:
3 Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation
4 Class members via their telephones for solicitation purposes, thereby invading the
5 privacy of said Plaintiff and the DNC Class and DNC Revocation Class members
6 whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff
7 and the DNC Class and DNC Revocation Class members were damaged thereby.

8 38. Common questions of fact and law exist as to all members of The
9 DNC Class which predominate over any questions affecting only individual
10 members of The DNC Class. These common legal and factual questions, which
11 do not vary between DNC Class members, and which may be determined without
12 reference to the individual circumstances of any DNC Class members, include,
13 but are not limited to, the following:

- 14 a. Whether, within the four years prior to the filing of this
15 Complaint, Defendant or its agents placed more than one
16 solicitation call to the members of the DNC Class whose
17 telephone numbers were on the National Do-Not-Call Registry
18 and who had not granted prior express consent to Defendant
19 and did not have an established business relationship with
20 Defendant;
- 21 b. Whether Defendant obtained prior express written consent to
22 place solicitation calls to Plaintiff or the DNC Class members'
23 telephones;
- 24 c. Whether Plaintiff and the DNC Class member were damaged
25 thereby, and the extent of damages for such violation; and
- 26 d. Whether Defendant and their agents should be enjoined from
27 engaging in such conduct in the future.

28 39. As a person that received numerous solicitation calls from Defendant

1 within a 12-month period, who had not granted Defendant prior express consent
2 and did not have an established business relationship with Defendant, Plaintiff is
3 asserting claims that are typical of the DNC Class.

4 40. Common questions of fact and law exist as to all members of The
5 DNC Class which predominate over any questions affecting only individual
6 members of The DNC Revocation Class. These common legal and factual
7 questions, which do not vary between DNC Revocation Class members, and
8 which may be determined without reference to the individual circumstances of
9 any DNC Revocation Class members, include, but are not limited to, the
10 following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendant or its agents placed more than one
13 solicitation call to the members of the DNC Class whose
14 telephone numbers were on the National Do-Not-Call Registry
15 and who had revoked any prior express consent and any
16 established business relationship with Defendant;
- 17 b. Whether Plaintiff and the DNC Class member were damaged
18 thereby, and the extent of damages for such violation; and
- 19 c. Whether Defendant and their agents should be enjoined from
20 engaging in such conduct in the future.

21 41. As a person that received numerous solicitation calls from Defendant
22 within a 12-month period, who, to the extent one existed, had revoked any prior
23 express consent and any established business relationship with Defendant,
24 Plaintiff is asserting claims that are typical of the DNC Revocation Class.

25 42. Plaintiff will fairly and adequately protect the interests of the
26 members of The Classes. Plaintiff has retained attorneys experienced in the
27 prosecution of class actions.

28 43. A class action is superior to other available methods of fair and

efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

44. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

45. Defendant have acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

46. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

47. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

48. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b), Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

49. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

50. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

51. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227 (b)(1)(A).

52. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

53. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

54. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

55. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular 47 U.S.C. § 227 (c)(5).

56. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

57. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

58. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

59. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

60. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and

every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

61. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

62. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 9th Day of December, 2019.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff